

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Scott Johnson,

Plaintiff,

v.

Ki Su Cho, in individual and
representative capacity as trustee of
The 2001 Cho Family Trust dated
September 21, 2001;
Yong C. Cho, in individual and
representative capacity as trustee of
The 2001 Cho Family Trust dated
September 21, 2001;
Andrew Jackson Douglas IV; and
Does 1-10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Scott Johnson complains of Ki Su Cho, in individual and
representative capacity as trustee of The 2001 Cho Family Trust dated
September 21, 2001; Yong C. Cho, in individual and representative capacity
as trustee of The 2001 Cho Family Trust dated September 21, 2001; Andrew
Jackson Douglas IV; and Does 1-10 ("Defendants"), and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a level C-5 quadriplegic. He cannot walk and also has significant manual dexterity impairments. He uses a wheelchair for mobility and has a specially equipped van.

2. Defendant Ki Su Cho, in individual and representative capacity as trustee of The 2001 Cho Family Trust dated September 21, 2001, owned the real property located at or about 2130 Trade Zone Blvd., San Jose, California, in May 2018.

3. Defendant Yong C. Cho, in individual and representative capacity as trustee of The 2001 Cho Family Trust dated September 21, 2001, owned the real property located at or about 2130 Trade Zone Blvd., San Jose, California, in May 2018.

4. Defendant Ki Su Cho, in individual and representative capacity as trustee of The 2001 Cho Family Trust dated September 21, 2001, owned the real property located at or about 2130 Trade Zone Blvd., San Jose, California, in December 2018.

5. Defendant Yong C. Cho, in individual and representative capacity as trustee of The 2001 Cho Family Trust dated September 21, 2001, owned the real property located at or about 2130 Trade Zone Blvd., San Jose, California, in December 2018.

6. Defendant Ki Su Cho, in individual and representative capacity as trustee of The 2001 Cho Family Trust dated September 21, 2001, owns the real property located at or about 2130 Trade Zone Blvd., San Jose, California, currently.

7. Defendant Yong C. Cho, in individual and representative capacity as trustee of The 2001 Cho Family Trust dated September 21, 2001, owns the real property located at or about 2130 Trade Zone Blvd., San Jose, California,

1 currently.

2 8. Defendant Andrew Jackson Douglas IV owned Sheldons Hobbies
3 located at or about 2130 Trade Zone Blvd., San Jose, California, in May 2018.

4 9. Defendant Andrew Jackson Douglas IV owned Sheldons Hobbies
5 located at or about 2130 Trade Zone Blvd., San Jose, California, in December
6 2018.

7 10. Defendant Andrew Jackson Douglas IV owns Sheldons Hobbies
8 (“Store”) located at or about 2130 Trade Zone Blvd., San Jose, California,
9 currently.

10 11. Plaintiff does not know the true names of Defendants, their business
11 capacities, their ownership connection to the property and business, or their
12 relative responsibilities in causing the access violations herein complained of,
13 and alleges a joint venture and common enterprise by all such Defendants.
14 Plaintiff is informed and believes that each of the Defendants herein,
15 including Does 1 through 10, inclusive, is responsible in some capacity for the
16 events herein alleged, or is a necessary party for obtaining appropriate relief.
17 Plaintiff will seek leave to amend when the true names, capacities,
18 connections, and responsibilities of the Defendants and Does 1 through 10,
19 inclusive, are ascertained.

20
21 **JURISDICTION & VENUE:**

22 12. The Court has subject matter jurisdiction over the action pursuant to 28
23 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
24 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

25 13. Pursuant to supplemental jurisdiction, an attendant and related cause
26 of action, arising from the same nucleus of operative facts and arising out of
27 the same transactions, is also brought under California’s Unruh Civil Rights
28 Act, which act expressly incorporates the Americans with Disabilities Act.

1 14. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
2 founded on the fact that the real property which is the subject of this action is
3 located in this district and that Plaintiff's cause of action arose in this district.
4

5 **FACTUAL ALLEGATIONS:**

6 15. Plaintiff went to Store in May 2018 and December 2018 with the
7 intention to avail himself of its goods or services, motivated in part to
8 determine if the defendants comply with the disability access laws.

9 16. The Store is a facility open to the public, a place of public
10 accommodation, and a business establishment.

11 17. Parking spaces are one of the facilities, privileges, and advantages
12 offered by Defendants to patrons of the Store.

13 18. Unfortunately, even though there were parking spaces marked and
14 reserved for persons with disabilities in the parking lot serving the Store, the
15 van parking stall and access aisle were not level with each other because there
16 was a built up curb ramp running into the access aisle.

17 19. This curb ramp caused slopes greater than 2.1%.

18 20. In addition to not having a level parking spaces, the access aisles did not
19 have "NO PARKING" warnings. The "NO PARKING" warnings were not
20 maintained.

21 21. Finally, there were no "Minimum Fine \$250" signs and there was no
22 tow-away signage in front of the parking stalls ostensibly designed for persons
23 with disabilities.

24 22. Currently, the van parking stall and access aisle are not level with each
25 other.

26 23. Currently, there are faded access aisles that do not have "NO
27 PARKING" warnings.

28 24. Currently, there are no "Minimum Fine \$250" signs and there is no tow-

1 away signage in front of the parking stalls ostensibly designed for persons with
2 disabilities.

3 25. Entrance into the Store is another one of the facilities, privileges, and
4 advantages offered by Defendants to patrons of the Store.

5 26. The entrance door hardware at the Store had a panel style handle that
6 required tight grasping to operate during plaintiff's visits.

7 27. Currently, the entrance door hardware at the Store has a panel style
8 handle that requires tight grasping to operate.

9 28. Defendants have failed to maintain in operable working condition those
10 features of facilities and equipment that are required to be readily accessible to
11 and usable by persons with disabilities at the Subject Property.

12 29. Plaintiff personally encountered these barriers.

13 30. This inaccessible facility denied the plaintiff full and equal access and
14 caused him difficulty.

15 31. The defendants have failed to maintain in working and useable
16 conditions those features required to provide ready access to persons with
17 disabilities.

18 32. The barriers identified above are easily removed without much
19 difficulty or expense. They are the types of barriers identified by the
20 Department of Justice as presumably readily achievable to remove and, in fact,
21 these barriers are readily achievable to remove. Moreover, there are numerous
22 alternative accommodations that could be made to provide a greater level of
23 access if complete removal were not achievable.

24 33. For example, there are numerous paint/stripe companies that will come
25 and stripe a level, van-accessible parking stall and access aisle and install
26 proper signage on rapid notice, with very modest expense, sometimes as low
27 as \$300 in full compliance with federal and state access standards.

28 34. The barriers in this complaint are easily fixable. For example, replacing

1 door hardware with accessible hardware is a simple and inexpensive task that
2 can be completed without the need to hire a professional.

3 35. Plaintiff will return to Store to avail himself of its goods or services and
4 to determine compliance with the disability access laws. He is currently
5 deterred from doing so because of his knowledge of the existing barriers. If the
6 barriers are not removed, the plaintiff will face unlawful and discriminatory
7 barriers again.

8 36. Given the obvious and blatant nature of the barriers and violations
9 alleged herein, the plaintiff alleges, on information and belief, that there are
10 other violations and barriers on the site that relate to his disability. Plaintiff will
11 amend the complaint, to provide proper notice regarding the scope of this
12 lawsuit, once he conducts a site inspection. However, please be on notice that
13 the plaintiff seeks to have all barriers related to his disability remedied. See
14 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
15 encounters one barrier at a site, he can sue to have all barriers that relate to his
16 disability removed regardless of whether he personally encountered them).

17
18 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
19 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
20 Defendants.) (42 U.S.C. section 12101, et seq.)

21 37. Plaintiff re-pleads and incorporates by reference, as if fully set forth
22 again herein, the allegations contained in all prior paragraphs of this
23 complaint.

24 38. Under the ADA, it is an act of discrimination to fail to ensure that the
25 privileges, advantages, accommodations, facilities, goods and services of any
26 place of public accommodation is offered on a full and equal basis by anyone
27 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
28 § 12182(a). Discrimination is defined, inter alia, as follows:

- a. A failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the accommodation would work a fundamental alteration of those services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- b. A failure to remove architectural barriers where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are defined by reference to the ADAAG, found at 28 C.F.R., Part 36, Appendix “D.”
- c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs or to ensure that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities. 42 U.S.C. § 12183(a)(2).

39. Under the 2010 Standards, access aisles shall be at the same level as the parking spaces they serve. Changes in level are not permitted. 2010 Standards 502.4. “Access aisle are required to be nearly level in all directions to provide a surface for wheelchair transfer to and from vehicles.” 2010 Standards § 502.4 Advisory. Specifically, built up curb ramps are not permitted to project into access aisles and parking spaces. *Id.* No more than a 1:48 slope is permitted. 2010 Standards § 502.4.

40. Here, the failure to provide a level van parking stall is a violation of the law.

41. Any business that provides parking spaces must provide accessible

1 parking spaces. 2010 Standards § 208. To qualify as a reserved handicap
2 parking space, the space must be properly marked and designated. Under the
3 ADA, the method, color of marking, and length of the parking space are to be
4 addressed by State or local laws or regulations. See 36 C.F.R., Part 1191, §
5 502.3.3. Under the California Building Code, to properly and effectively
6 reserve a parking space for persons with disabilities, each parking space must
7 be at least 216 inches in length. CBC § 11B-502.2 Under the California
8 Building Code, to properly and effectively reserve a parking space for persons
9 with disabilities, each such space must be identified with a reflectorized sign
10 permanently posted adjacent to and visible from each stall or space. CBC §
11 1129B.4. The sign must consist of the International Symbol of Accessibility
12 (♿) in white on a blue background. Id. It cannot be smaller than 70 square
13 inches and must be mounted so that there is a minimum of 80 inches from the
14 bottom of the sign to the parking space. Id. Signs must be posted so that they
15 cannot be obscured by a vehicle parking in the space. Id. An additional sign or
16 additional language below the symbol of accessibility must state, “Minimum
17 Fine \$250” to ensure that the space remains available for persons with
18 disabilities. Id. Another sign must be posted in a conspicuous place at the
19 entrance to the parking lot or immediately adjacent to each handicap parking
20 space, with lettering 1 inch in height, that clearly and conspicuously warn that
21 unauthorized vehicles parking in the handicap parking spaces can be towed at
22 the owner’s expense. Id. Additionally, the surface of the handicap parking stall
23 must have a profile view of a wheelchair occupant (♿) that is 36 inches by 36
24 inches. Id. And the surface of the access aisle must have a blue border. CBC §
25 1129B.3. The words “NO PARKING” in letters at least a foot high must be
26 painted on the access aisle. Id.

27 42. Here, there were faded white diagonal lines that did not have “NO
28 PARKING” warnings in the access aisles. The defendants do not maintain the

1 access aisles.

2 43. Here, there were no “Minimum Fine \$250” signs and no tow-away
3 signs, in violation of the ADA.

4 44. Door hardware must have a shape that is easy to grasp with one hand
5 and does not require tight grasping, tight pinching, or twisting of the wrist to
6 operate. 2010 Standards § 404.2.7.

7 45. Here, the failure to provide such door hardware is a violation of the ADA.

8 46. The Safe Harbor provisions of the 2010 Standards are not applicable
9 here because the conditions challenged in this lawsuit do not comply with the
10 1991 Standards.

11 47. A public accommodation must maintain in operable working condition
12 those features of its facilities and equipment that are required to be readily
13 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

14 48. Here, the failure to ensure that the accessible facilities were available
15 and ready to be used by the plaintiff is a violation of the law.

16
17 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
18 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
19 Code § 51-53.)

20 49. Plaintiff repleads and incorporates by reference, as if fully set forth
21 again herein, the allegations contained in all prior paragraphs of this
22 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
23 that persons with disabilities are entitled to full and equal accommodations,
24 advantages, facilities, privileges, or services in all business establishment of
25 every kind whatsoever within the jurisdiction of the State of California. Cal.
26 Civ. Code § 51(b).

27 50. The Unruh Act provides that a violation of the ADA is a violation of the
28 Unruh Act. Cal. Civ. Code, § 51(f).

1 51. Defendants' acts and omissions, as herein alleged, have violated the
2 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff's
3 rights to full and equal use of the accommodations, advantages, facilities,
4 privileges, or services offered.

5 52. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
6 discomfort or embarrassment for the plaintiff, the defendants are also each
7 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
8 (c).)

9 53. Although the plaintiff was markedly frustrated by facing discriminatory
10 barriers, even manifesting itself with minor and fleeting physical symptoms,
11 the plaintiff does not value this very modest physical personal injury greater
12 than the amount of the statutory damages.

13
14 **PRAYER:**

15 Wherefore, Plaintiff prays that this Court award damages and provide
16 relief as follows:

17 1. For injunctive relief, compelling Defendants to comply with the
18 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
19 plaintiff is not invoking section 55 of the California Civil Code and is not
20 seeking injunctive relief under the Disabled Persons Act at all.

21 2. Damages under the Unruh Civil Rights Act, which provides for actual
22 damages and a statutory minimum of \$4,000 for each offense.
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1 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
2 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

3
4 Dated: January 23, 2019

CENTER FOR DISABILITY ACCESS

5
6
7 By:



8
9 Chris Carson, Esq.
Attorney for plaintiff